

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JONATHAN NEIL SHEPPARD,

Defendant-Appellant.

UNPUBLISHED

May 22, 2003

No. 238116

Calhoun Circuit Court

LC No. 01-002167-FH

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of entry without breaking, MCL 750.111, and two counts of resisting and obstructing under MCL 750.479b. He was sentenced as a fourth habitual offender to concurrent terms of 58 to 180 months on the entry without breaking conviction, and to 46 to 180 months on the resisting and obstructing convictions. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant took a drill, approximately \$50 in coins and a bowling bag from a garage. He was apprehended while riding away on a bicycle. He was taken into custody based on a parole detainer but resisted being handcuffed, a struggle that lasted one-half minute to one minute. Defendant was told that he might also be charged with possession of burglary tools and stolen property. He then asked if he would be charged if he told the officers where the merchandise came from. Upon being told it would depend on whether the homeowner pressed charges, defendant confessed that he had taken the merchandise from a garage and led the officers to the residence. He apparently wanted to apologize to the owner but the owner would not come out to see him in the patrol car.

During her closing argument, defendant's counsel said that there was no dispute that defendant took the items from the garage, but argued his innocence with respect to the resisting and obstructing charges. Defendant argues that where he denied his involvement in the charged offenses, he was deprived of his presumption of innocence and effective assistance of counsel because trial counsel conceded his guilt. Defendant did not raise this issue below, and did not seek a *Ginther*¹ hearing. The record is devoid of any evidence that defendant objected to

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

counsel's trial strategy of admitting the offense regarding which defendant had virtually confessed at the scene and as to which the evidence was overwhelming, and contesting the other charges. While the contested charges carried lesser penalties, it seems that these were the charges that defendant himself contested. Counsel used defendant's forthrightness and cooperation with respect to the entry without breaking charge to support his innocence of the resisting and obstructing charge. Counsel was not ineffective, and defendant has not shown that he did, in fact, deny his involvement in the charged offense.

Affirmed.

/s/ William C. Whitbeck
/s/ Helene N. White
/s/ Pat M. Donofrio